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Notice of Allowability	Application No.	Applicant(s)	
	09/744,493	BRYAN ET AL.	
	Examiner	Art Unit	
	Alvin J. Stewart	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to argument filed on 04/11/06.
2. ☒ The allowed claim(s) is/are 1-11, 13, 15, and 18-23 (renumbered as 1-19).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

Response to Arguments

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

After a careful examination of the Applicant's argument filed on April 11, 2006 in the Pre-Appeal Brief Request for Review, the Examiner has withdrawn the rejection to claims 11, 22 and 23 by the Rogozinski reference and has decided to allow the case.

Allowable Subject Matter

Claims 1-11, 13, 15 and 18-23 are allowed.

EXAMINER'S AMENDMENT

Regarding claim 8 and 9, An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In claims 8 and 9, line 1, between the words "prosthesis" and "affixed" the following phrase has been entered: ---adapted to be---.

Regarding claim 22 and the abstract, an examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David M. O'Dell on May 09, 2006. The Examiner called the Applicant's representative in order

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to add a phrase in to claim 22 for the purpose of clarifying the invention and NOT to limit the claim.

The application has been amended as follows:

In the abstract, the abstract has been substitute by the following:

---A small profile, cylindrically shaped prosthetic disc device is provided. The device housing is comprised of two longitudinally split hollow halves, between which are contained multiple discoid shaped resilient bodies which may be of a polymeric type, or they may contain hydrogel. These bodies may lie in concave surfaces located on the interior of each side of the split cylindrical housing. The housing halves even under maximum physiological loads, do not contact one another directly. Threads on the exterior surface of the cylindrical housing facilitates insertion and retention in the prepared bone opening.---

In claim 22, line 1, the word "cylindrical" has been substitute by the following: ---having an outer cylindrical cross-section---

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: After careful consideration of the Applicant's remarks the Examiner has found the independent claims are allowable. There is no evidence in the prior art of a disc prosthesis comprising a hollow cylindrical housing with a substantially circular outer cross-section, the housing including two separate halves and at least one prosthetic disc located between the two housing halves, wherein each housing half is defined in its interior by a concave surface.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Stewart
ALVIN J. STEWART
PRIMARY EXAMINER
Art Unit 3738

May 11, 2006.